

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
May 10, 2006 Session

**STATE OF TENNESSEE v. XAVIER KENTA LEWIS**

**Direct Appeal from the Circuit Court for Montgomery County**  
**No. 40300603     Michael R. Jones, Judge**

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**No. M2005-02062-CCA-R3-CD - Filed August 16, 2006**

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The defendant, Xavier Kenta Lewis, was convicted by a Montgomery County jury of possession of over .5 grams of cocaine with the intent to deliver, possession of marijuana, and possession of drug paraphernalia and was sentenced by the trial court as a Range I, standard offender to an effective sentence of eight years, with sixty days in confinement and the balance of the time on community corrections. In a timely appeal to this court, he raises three issues: (1) whether the affidavit in support of the search warrant for his girlfriend's residence was sufficient to establish probable cause for the search; (2) whether the search exceeded the scope of the warrant; and (3) whether the evidence was sufficient to sustain his conviction for possession of cocaine with the intent to deliver. Following our review, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed**

ALAN E. GLENN, J., delivered the opinion of the court, in which JERRY L. SMITH, J., joined. GARY R. WADE, P.J., Not Participating.

Roger E. Nell, District Public Defender (on appeal), and Russel A. Church, Assistant Public Defender (at trial), for the appellant, Xavier Kenta Lewis.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; and Lance A. Baker and Helen Young, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

\_\_\_\_\_ On April 18, 2003, Detective Nicholas Newman of the Clarksville Police Department began investigating a complaint from University Package Store in Clarksville that a man named Weldon Michael Bridges had attempted to cash a counterfeit check at the store. In a statement recorded the following day, Bridges informed Detective Newman that "Tai," which Detective Newman later

learned was the defendant's nickname, resided at 1752 Cherry Point Court in Clarksville and had generated the check on his home computer. Bridges told Detective Newman that Tai had driven him to the University Package Store to cash the check and that he and Tai had previously cashed a similar counterfeit check together in Kentucky.

Based on the above information, Detective Newman obtained a warrant to search the Cherry Point Court premises for any and all evidence relating to a counterfeit check operation. However, instead of evidence relating to a counterfeit check operation, he and his fellow officers found items connected to the sale of illegal drugs, including the following: 7.5 grams of cocaine; 2.9 grams of marijuana; four sets of scales; a police scanner; a box of plastic bags; assorted cell phones, pagers, and other electronic equipment; and a total of \$1643 in cash. The defendant, who was arrested at the scene, was subsequently charged with possession of more than .5 grams of cocaine with the intent to sell and with the intent to deliver, possession of marijuana, and possession of drug paraphernalia.

### **Suppression Hearing**

In a pretrial motion to suppress the results of the search, the defendant argued that Detective Newman's supporting affidavit was insufficient to establish probable cause and that the search exceeded the scope of the warrant. With respect to his first claim, the defendant contended that Detective Newman failed to allege sufficient facts to satisfy the veracity prong of the Aguilar-Spinelli test<sup>1</sup> for information supplied by a criminal informant. After reviewing the warrant and listening to the arguments of counsel, the trial court ruled that the search warrant was valid on its face. Thereafter, the court heard testimony relating to the issue of whether the search exceeded the scope of the warrant.

The defendant's first witness, Detective Newman, testified that Bridges told him in his April 19, 2003, videotaped statement that there was drug activity at the Cherry Point Court residence. He said he did not include the information in his application for a search warrant because he was not interested in looking for drugs at the residence. He stated he enlisted the aid of Agent Robbins from the major crimes unit, who in turn assembled a search team made up of drug investigators, because there were no property crimes detectives available in his district to assist him at the time he executed the search. He explained: "We had a hard time getting anybody on Saturday afternoon . . . I tried several people. I tried to reach Detective Cummings by pager and cellphone [sic], and even called my supervisor to ask him to try and reach him. I tried to reach detectives." He testified that he did not find any computers in the home but did find a computer desk, computer discs, and an outline in the dust where it appeared that a computer had recently been removed from the desk. He acknowledged that the discs contained music files and that he found no evidence relating to a

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<sup>1</sup>See State v. Jacumin, 778 S.W.2d 430 (Tenn. 1989) (adopting two-pronged standard, based on Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), and Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969), to be used when affiant relies on hearsay information supplied by a criminal informant).

counterfeit check operation. He further acknowledged that he did not know the defendant's full name or who owned the residence at the time he executed the search. Finally, he testified that the items he directed to be seized were located in what he designated as "bedroom number two" of the residence.

Agent Donnie Robbins of the Clarksville Police Department Major Crimes Unit testified that his primary duties involved drug investigations. He said he was aware of the discussion about drugs in the residence but was also aware that Detective Newman had determined not to pursue that information and that the search warrant was limited to evidence relating to a counterfeit check operation. He testified that upon entering the residence, the first item he saw and seized was a plastic bag of white powder, which he found lying in the open drawer of a night stand in "bedroom one." He acknowledged that he also seized six pagers, a walkie talkie, and at least three cell phones and that he did not check to determine if those items were operational. He said that he seized other items, including keyboards and electronic equipment, as possible proceeds from the sale of illegal drugs, pursuant to the Tennessee Drug Control Act, because the defendant told him that he was a musician and unemployed. He further testified that he believed there were four people present in the residence when he and the other officers arrived: the defendant and his girlfriend, Jenny Lynn Gordon, and two other individuals who were visiting in the home. On cross-examination, he reiterated that the plastic bag of white powder was the first item he saw when he began his search and stated that he had no intention of seizing the electronic equipment and other items until he found the white powder, which the Tennessee Bureau of Investigation ("TBI") Crime Laboratory later determined to be 7.2 grams of cocaine.<sup>2</sup>

In a written order entered on February 3, 2004, the trial court denied the motion to suppress, finding, among other things, that "[a] fair reading of the affidavit established that Mr. Bridges was confessing to a crime" and that the cocaine, which was in plain sight, was "contraband per se" subject to immediate seizure. Accordingly, the trial court denied the motion to suppress as to the contraband per se seized during the execution of the warrant. In a continuation of the suppression hearing, held immediately prior to trial, the trial court ruled that the State could also introduce evidence of items, such as scales, plastic bags, and cell phones, that were associated with the drug trade but could not introduce evidence of the handguns or bulletproof vests that the police discovered in the residence.

### **Trial**

The State's first two witnesses at trial were Detective Newman and Agent Robbins, who described their respective roles in the execution of the search warrant at 1752 Cherry Point Court. Detective Newman testified that the defendant, the defendant's girlfriend, and two white males were at the residence when he and the search team arrived to serve the warrant. He said that after being advised of his rights and waiving his right to remain silent, the defendant made a statement in which he said that he lived at the residence with his girlfriend, was unemployed, and was holding the

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<sup>2</sup>The TBI forensic chemist who analyzed the evidence testified at trial that the cocaine weighed 7.5 grams.

cocaine for a friend. The defendant also told the officers that the cash in the residence was his. On cross-examination, Detective Newman acknowledged that the defendant might have told the officers not that he was unemployed but was attempting to earn his living as a musician.

Agent Robbins described the items he found in his search of the residence, which included the following: two sets of digital scales; a set of Swinger scales; a set of balance scales; three small bags of green plant material, all of which field-tested positive for marijuana; two bags of white powder, both of which field-tested positive for cocaine; cell phones; a box of sandwich bags; and a total of \$1643 in United States currency. According to Agent Robbins' testimony, all of the items, with the exception of \$43 in cash and two of the three bags of marijuana, were found in bedroom one, or the master bedroom of the residence. He testified that one bag of marijuana was found in the dining room and a second bag of marijuana was found in the living room. He could not recall where the \$43 in cash was located.

Agent Robbins testified that the defendant, his girlfriend, and two other individuals were in the residence when the officers arrived to execute the search. He said that he informed the defendant of his rights and the defendant agreed to be questioned at the scene. In his ensuing statement, the defendant said that the \$1643 was his, that he was attempting to get into the music business, and that he was holding the cocaine for a friend. Agent Robbins stated that he weighed the cocaine before turning it over to the evidence technicians at the police department and determined its total weight, including the weight of the packaging, was 8 grams. He estimated that he had made nearly 100 drug arrests during his career and testified that, based on his training and experience, 8 grams of powder cocaine would sell on the street for \$500 to \$800. He further testified that the normal amount of powder cocaine sold to a user is approximately one gram, which would cost between \$80 to \$120. Agent Robbins stated that drug dealers often use cell phones to set up drug transactions, police scanners to monitor police activity in their neighborhood, scales to weigh out drugs, and plastic bags to package drugs for sale. He said that, in his opinion, 7.5 grams of powder cocaine was "a significant or large quantity of cocaine."

On cross-examination, Agent Robbins conceded that he had testified in the preliminary hearing that the cocaine, with the packaging, weighed approximately 7, not 8, grams. He acknowledged he did not test the scales, police scanner, or cell phones to determine if any of the equipment was operational. He further acknowledged that he found several "roaches" or marijuana cigarettes in an ashtray in the home and several plastic bags filled with change, which he ultimately returned to the defendant's girlfriend. He stated that he did not recall any odor of smoked marijuana when he entered the house and that, in his experience, drug buyers or users do not use scales.

Charles Hargis, the evidence room supervisor for the Clarksville Police Department, and Felicia Evans, an evidence technician at the TBI Crime Laboratory, each described his or her respective role in the receipt, storage, and transportation of the drug evidence to and from the TBI Crime Laboratory for testing. TBI Special Agent Patty Choatie, who was accepted by the court as an expert witness in the field of forensic chemistry, testified that she analyzed the substances in the

case and determined that the white powder consisted of 7.5 grams of cocaine hydrochloride, or cocaine powder, and that the green plant material consisted of 2.9 grams of marijuana.

The defendant's mother, Rosemary Read, testified on the defendant's behalf that the defendant was in a band and earned some income from the sale of music CDs. She said the defendant also received some financial support from his family. Referring to her bank records, which were subsequently admitted as an exhibit, she testified that on March 31, 2003, she withdrew \$2200 from her bank account and that about a week later she gave the defendant \$2000 of those funds to pay for the restoration of her 1977 Cadillac. She stated that the defendant was living in West Memphis, Arkansas, at that time but occasionally came to Clarksville to visit her and his pregnant girlfriend, Jean Gordon, who had moved into the Cherry Point Court residence in March 2003. According to Read, the defendant stayed at her home with her during his visits to Clarksville and, to her knowledge, had been to the Cherry Point Court residence only once. On cross-examination, she testified that she had given the defendant the nickname "Tae," spelled "T-A-E," when he was a baby.

The twenty-seven-year-old defendant, who said his relatives knew him as "Tae," testified that at the time of his arrest his girlfriend had been living at the Cherry Point Court residence for approximately one month. He said he lived in West Memphis at the time and had visited his girlfriend at the residence three or four times but had spent the night only twice. He further stated that neither the lease nor the utilities to the residence were in his name.

The defendant testified that he was smoking a marijuana cigarette in the front room of the residence when the police officers arrived. He said that the cash, marijuana, and cocaine in the residence were his. He testified that his mother had given him the cash to pay for the restoration of her Cadillac and that he had purchased the drugs for his own personal use. He acknowledged that the scales were his and said that he used them to ensure that he was getting his money's worth of the drugs he purchased. He stated that he was in a musical band, performed at music shows, and earned money from the sale of music CDs. He further testified that the police scanner in the home had never worked, the cell phones were his old phones that he had given to Gordon, and that he used the sandwich bags to store receipts and change. Finally, he claimed that he had paid only \$150 to purchase a quarter ounce, or approximately seven grams, of cocaine for his personal use a day after his arrival in Clarksville. He said that it was not unusual for him to purchase that quantity of cocaine and that his friends would sometimes "get high" with him. On cross-examination, he adamantly denied that he was a drug dealer and claimed that he could easily use seven grams of cocaine in two days.

## **ANALYSIS**

### **I. Denial of Motion to Suppress**

As his first two issues, the defendant contends that the trial court erred in denying his motion to suppress the results of the search on the basis that the affidavit failed to establish probable cause

for the search and the search exceeded the scope of the warrant. When this court reviews a trial court's ruling on a motion to suppress evidence, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). The party prevailing at the suppression hearing is afforded the "strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence." State v. Keith, 978 S.W.2d 861, 864 (Tenn. 1998). The findings of a trial court in a suppression hearing are upheld unless the evidence preponderates against those findings. See id. However, the application of the law to the facts found by the trial court is a question of law and is reviewed *de novo*. See State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

### **A. Probable Cause**

The defendant first argues that Detective Newman's affidavit was insufficient to establish probable cause because it failed to satisfy the veracity prong of the test for information supplied by a criminal informant. Under both the Tennessee and United States Constitutions, no search warrant may be issued except upon probable cause, which has been defined as "a reasonable ground for suspicion, supported by circumstances indicative of an illegal act." State v. Henning, 975 S.W.2d 290, 294 (Tenn. 1998). Tennessee requires a written and sworn affidavit, "containing allegations from which the magistrate can determine whether probable cause exists," as "an indispensable prerequisite to the issuance of a search warrant." Id. The affidavit must contain more than mere conclusory allegations on the part of the affiant. Id. However, a finding of probable cause made by an issuing magistrate is entitled to great deference. State v. Yeomans, 10 S.W.3d 293, 296 (Tenn. Crim. App. 1999) (citing State v. Melson, 638 S.W.2d 342, 357 (Tenn. 1982), cert. denied, 459 U.S. 1137, 103 S. Ct. 770, 74 L. Ed. 2d 983 (1983)). Therefore, the standard to be employed in reviewing the issuance of a search warrant is "whether, in light of all the evidence available, the magistrate had a substantial basis for finding probable cause." State v. Meeks, 876 S.W.2d 121, 124 (Tenn. Crim. App. 1993) (citation omitted).

In State v. Jacumin, 778 S.W.2d 430, 436 (Tenn. 1989), our supreme court adopted the two-pronged Aguilar-Spinelli test for determining whether an affidavit that relies upon allegations supplied by a criminal informant is sufficient to establish probable cause. Under the first, "basis of knowledge" prong of the test, "facts must be revealed which permit the magistrate to determine whether the informant had a basis for his information that a certain person had been, was or would be involved in criminal conduct or that evidence of crime would be found at a certain place." State v. Moon, 841 S.W.2d 336, 338 (Tenn. Crim. App. 1992). Under the second, or "veracity" prong of the test, "facts must be revealed which permit the magistrate to determine either the inherent credibility of the informant or the reliability of his information on the particular occasion." Id. (citation omitted).

Detective Newman's affidavit in support of his application for the search warrant states in pertinent part:

On April 18, 2003 your affiant received a complaint from University Package Store located at 303 College Street. The complaint was in reference to a counterfeit check. Weldon Michael Bridges had attempted to receive cash from the store in exchange for a counterfeit O'Charley's payroll check with a face value of \$723.34.

On April 19, 2003 your affiant obtained a recorded statement from Bridges. Bridges made the following statement:

1. That he had received the check from a black male known as "Tai."
2. "Tai" had produced the check from a computer located at "Tai's" residence.
2. [sic] "Tai" lives at 1752 Cherry Point Court.
3. That he had observed "Tai" produce the [c]heck.
4. "Tai" drove him to the store to cash the check.
5. That he and "Tai" had previously cashed a check in Oak Grove, Kentucky.
6. "Tai" had received the proceeds from the check in Oak Grove, Kentucky.
7. "Tai" was to receive the proceeds from the check at University Package Store.

In concluding that the affidavit was sufficient to establish probable cause, the trial court made the following findings of fact and conclusions of law:

Probable cause: The affidavit established that Weldon Michael Bridges had attempted to pass a counterfeit check at University Package Store. Mr. Bridges was interviewed and provided information that "Tai" had produced the check from the computer located at 1752 Cherry Point. Mr. Bridges had watched "Tai" produce the check. "Tai" then drove Mr. Bridges to University Package Store and Mr. Bridges attempted to cash the check. A fair reading of the affidavit established that Mr. Bridges was confessing to a crime. Mr. Bridges had personally observed the computer create the check apparently on April 18, 2003. The Court is of the opinion that probable cause is stated in the affidavit for the search of the residence at 1752 Cherry Point Court.

The defendant concedes that the affidavit established the basis of Bridges' knowledge but argues that it was "utterly devoid of information . . . as to the veracity" of his information. In support of this claim, he points out that Detective Newman made no assertion that he knew Bridges prior to the time of his statement or that Bridges had previously given him accurate information. He also asserts that Detective Newman made no effort to corroborate any of the information provided by Bridges. The State responds by arguing that Bridges' hearsay information was partially corroborated by the University Package Store's complaint. The State further cites State v. Moon, 841 S.W.2d

336 (Tenn. Crim. App. 1992), to argue that Bridges' statement, made against his penal interest, directly bears on the reliability of the statement. We agree with the State.

In Moon, this court rejected the State's argument that the veracity prong of the Aguilar-Spinelli test was satisfied by an affidavit that stated that the criminal informant who supplied the information had "given information against his penal interest." 841 S.W.2d at 339. However, in so doing, we distinguished the facts of that case, in which the affidavit did not detail how the informant's admissions related to the criminal activity that was the target of the warrant, from the facts in the case relied on by the State, United States v. Harris, 403 U.S. 573, 91 S. Ct. 2075, 29 L. Ed. 2d 723 (1971), in which the informant's statement against penal interest was directly related to the relevant criminal activity. We wrote:

Thus, admissions of crime may carry their own indicia of credibility. It is primarily from this springboard that the Harris plurality leapt to reach a conclusion that an informant's information is reliable so as to provide probable cause.

However, such a conclusion necessarily requires that the statement against penal interest be the one which provides the reason for the search. As was conceded by the Harris plurality, "admissions of crime do not always lend credibility to contemporaneous or later accusations of another." In Harris, it was the content of the informant's admission which, without more, was held to implicate the targeted property and to furnish probable cause. Thus, even relying on the Harris rationale, absent the affidavit in this case providing how the admission against interest relates to the criminal activity, the targeted premises or the defendant, it carries no weight toward enhancing the reliability of the informant's information.

Moon, 841 S.W.2d at 340 (citation omitted).

In the case at bar, Bridges' statement against penal interest, in the form of his detailed account of his participation with the defendant in the counterfeit check operation, which ultimately led to his arrest and ensuing confession, was directly related to the criminal activity, premises, and person targeted by the search warrant. We conclude, therefore, that the information contained in Detective Newman's affidavit was sufficient to establish the veracity prong of the Aguilar-Spinelli test and, thus, sufficient to establish probable cause for the issuance of the warrant.

## **B. Scope of the Search**

The defendant also contends that the search impermissibly exceeded the scope of the warrant. He asserts that the officers purposefully went to the residence to search for items that were not authorized by the warrant and that they seized evidence without justification. In support, he notes that neither Agent Robbins nor Detective Newman testified with specificity as to where any of the seized items other than the initial bag of cocaine was located or what the officers were searching for when the items were found. The State responds that the search did not exceed the scope of the



warrant because the items seized were either in plain sight or discovered in places that the officers were authorized by the warrant to search. Once again, we agree with the State.

Under the “plain view” doctrine, an officer is entitled to seize an item when (1) the item seized was in plain view; (2) the officer had a right to be in the position to view the item; and (3) the incriminating nature of the item was immediately apparent. See State v. Cothran, 115 S.W.3d 513, 524-25 (Tenn. Crim. App. 2003) (concluding that inadvertent discovery is no longer a requirement for application of plain view doctrine under Tennessee Constitution). “An example of the applicability of the ‘plain view’ doctrine is the situation in which the police have a warrant to search a given area for specified objects, and in the course of the search come across some other article of incriminating character.” Coolidge v. New Hampshire, 403 U.S. 443, 465, 91 S. Ct. 2022, 2037 (1971).

The search warrant specifically authorized the officers to search the person of “Tai,” “a black male,” and the premises of 1752 Cherry Point Court, including all outbuildings and vehicles located on the premises, for

any or all equipment, devices, records, computers and computer storage discs, to include the seizure of computers to retrieve such records, books or documents adapted and used for the purpose of producing, packaging, dispensing, delivering or obtaining payroll checks, any indicia ownership, dominion, or control over the premises to be searched including rental receipts, mortgage payments, utility bills, photographs of any persons involved in the criminal conduct, all financial records pertaining to the disposition of the proceeds of the violation of the criminal laws specified above, and all of the above records, whether stored on paper . . . or on memory storage devices such as optical disks programmable instruments such as telephones, voice mail, answering machines, electronic address books, calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records, and any goods or personal property, including US currency or negotiable instruments, constituting proceeds of a violation of the aforesaid laws or funds used to facilitate the same, and any evidence or items which would be used to conceal the forgoing or prevent its discovery.

During their authorized search for the above extensive list of items connected to the suspected counterfeit check operation, the officers would necessarily have opened dresser drawers, searched in closets and shelves, and looked under furniture, thereby uncovering not only the original bag of cocaine but also the other items, including the police scanner, plastic bags, and scales, which Agent Robbins testified that he recognized from his experience as associated with the sale of illegal drugs. We conclude, therefore, that the trial court did not err in denying the defendant’s motion to suppress.

## II. Sufficiency of the Evidence

As his last issue, the defendant contends that the evidence was insufficient to sustain his conviction for possession of cocaine with the intent to deliver. Citing, among other things, his own testimony that the cocaine was for his personal use, the defendant argues that the evidence at most supports a conviction for simple possession. We respectfully disagree.

In our analysis of this issue, we must consider “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); see also Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). In so doing, we are mindful that all questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

Viewing the evidence in the light most favorable to the State, we conclude that it was more than sufficient to sustain the defendant’s conviction for possession of more than .5 grams of cocaine with the intent to deliver. The jury heard Agent Robbins’ testimony with respect to the significance of the large amount of cocaine, cash, police scanner, scales, plastic bags, and other items in the residence, as well as the defendant’s explanations for why he was in possession of those items. By convicting the defendant of the greater charge of possession of cocaine with the intent to deliver, the jury obviously chose not to accredit the defendant’s testimony that he had bought the cocaine for his own personal use. This was its prerogative as the trier of fact.

### **CONCLUSION**

We conclude that the trial court properly denied the defendant's motion to suppress and that the evidence was sufficient to sustain the defendant's conviction for possession of cocaine with the intent to deliver. Accordingly, we affirm the judgments of the trial court.

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ALAN E. GLENN, JUDGE